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House BILL NO. 234 Two

INTRODUCED BY
Gosfield

Harold Bishop *Andrew Clark* *Frank*
Shirley Halpern *Theresa* *Wendy Beck*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN LOAN AND CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE ENFORCEABLE; AMENDING SECTION 28-2-903, MCA; AND PROVIDING AN APPLICABILITY DATE."

Markus *Ray* *Barnett* *Mills*
Bob Brown *Grinde* *Harlow* *McKee* *Wesman* *Knox*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the ~~same~~ agreements or some note or memorandum ~~thereof~~ of them is in writing and subscribed by the party to be charged or ~~is~~ the party's agent:

- (a) an agreement that by its terms is not to be performed within a year from ~~the~~ its making ~~thereof~~;
- (b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;
- (c) an agreement made upon consideration of marriage, other than a mutual promise to marry;
- (d) an agreement for ~~the~~ leasing real property for a longer period than 1 year, ~~or~~ for the sale of real property, or for the sale of an interest therein in real property. ~~Such~~ An agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.
- (e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission; and
- (f) loan and credit agreements subject to the provisions of [section 2].

(2) Evidence of an agreement described in subsections (1)(a) through (d)(1)(f) ~~of subsection (1)~~ is not admissible without the writing or secondary evidence of its contents.

(3) ~~No evidence~~ Evidence is not admissible to charge a person upon a representation as to the credit of a third person unless ~~such~~ the representation or some memorandum ~~thereof~~ of the representation is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."



1 **NEW SECTION. Section 2. Loan and credit agreements required to be in writing.** (1) A person
2 may not maintain an action for legal or equitable relief, or a defense, based upon a failure to perform an
3 alleged promise, undertaking, accepted offer, commitment, or agreement to lend or borrow money, to defer
4 or forbear in the repayment of money, or to renew, modify, amend, or cancel a loan of money or any
5 provision with respect to a loan of money unless the person seeking to maintain the action or defense has
6 received from the party to be charged or the party's agent a writing that contains the material terms and
7 conditions of the promise, undertaking, accepted offer, commitment, or agreement and that is signed by
8 the party to be charged or the party's agent.

9 (2) Failure to comply with subsection (1) precludes an action or defense based on:

10 (a) course of dealing;

11 (b) performance;

12 (c) fiduciary relationship;

13 (d) promissory or equitable estoppel;

14 (e) part performance, except to the extent that the part performance is explainable only by
15 reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or

16 (f) negligent misrepresentation.

17 (3) Subsections (1) and (2) do not apply to:

18 (a) any case involving a principal amount of less than \$25,000;

19 (b) an agreement or change in the terms of an agreement relating to a letter of credit, line of credit,
20 or lender credit card or similar arrangement;

21 (c) sales transactions, including sales by public utilities and other vendors of goods and services;

22 (d) an overdraft on a deposit or similar account; or

23 (e) any case in which the funds are to be used for personal, family, or household purposes.

24 (4) In the event of a conflict between this section and any other provision of state law pertaining
25 to the requirement of a signed writing, the provisions of this section control.

26

27 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
28 integral part of Title 28, chapter 2, part 9, and the provisions of Title 28, chapter 2, part 9, apply to
29 [section 2].

30

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 234

INTRODUCED BY HIBBARD, BISHOP, ANDERSON, TUSS, CLARK, GRADY, GROSFIELD, DEVANEY,
HALLIGAN, T. NELSON, SHEA, WYATT, PECK, MERCER, HARPER, ROSE, BARNETT, MILLS, CRIPPEN,
B. BROWN, GRINDE, PAVLOVICH, MCKEE, WISEMAN, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN LOAN AND CREDIT AGREEMENTS TO BE
IN WRITING IN ORDER TO BE ENFORCEABLE; PROVIDING A DUTY TO INFORM; AMENDING SECTION
28-2-903, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-903, MCA, is amended to read:

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~~same agreements~~ or some note or memorandum ~~thereof~~ of them is in writing and subscribed by the party
to be charged or ~~his~~ the party's agent:

(a) an agreement that by its terms is not to be performed within a year from ~~the~~ its making ~~thereof~~;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases
provided for in 28-11-105;

(c) an agreement made upon consideration of marriage, other than a mutual promise to marry;

(d) an agreement for ~~the~~ leasing real property for a longer period than 1 year, ~~or~~ for the sale of real
property, or for the sale of an interest therein in real property. ~~Such~~ An agreement, if made by an agent of
the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by
the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for
compensation or a commission; and

(f) loan and credit agreements subject to the provisions of [section 2].

(2) Evidence of an agreement described in subsections (1)(a) through (d), ~~(1)(f) of subsection (1)~~ is
not admissible without the writing or secondary evidence of its contents.

(3) ~~No evidence~~ Evidence is not admissible to charge a person upon a representation as to the
credit of a third person unless ~~such~~ the representation or some memorandum ~~thereof~~ of the representation

1 is in writing and either subscribed by or in the handwriting of the party to be charged.

2 (4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

3

4 **NEW SECTION. Section 2. Loan and credit agreements required to be in writing.** (1) A person
5 may not maintain an action for legal or equitable relief, or a defense, based upon a failure to perform an
6 alleged promise, undertaking, accepted offer, commitment, or agreement to lend or borrow money, to defer
7 or forbear in the repayment of money, or to renew, modify, amend, or cancel a loan of money or any
8 provision with respect to a loan of money unless the person seeking to maintain the action or defense has
9 received from the party to be charged or the party's agent a writing that contains the material terms and
10 conditions of the promise, undertaking, accepted offer, commitment, or agreement and that is signed by
11 the party to be charged or the party's agent.

12 (2) Failure to comply with subsection (1) precludes an action or defense based on:

13 (a) course of dealing;

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16 (d) promissory or equitable estoppel;

17 (e) part performance, except to the extent that the part performance is explainable only by
18 reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or

19 (f) negligent misrepresentation.

20 (3) Subsections (1) and (2) do not apply to:

21 (a) any case involving a principal amount of less than ~~\$25,000~~ \$75,000;

22 (b) an agreement or change in the terms of an agreement relating to a letter of credit, line of credit,
23 or lender credit card or similar arrangement;

24 (c) sales transactions, including sales by public utilities and other vendors of goods and services;

25 (d) an overdraft on a deposit or similar account; ~~or~~

26 (e) any case in which the funds are to be used for personal, family, or household purposes;

27 **(F) ANY CASE IN WHICH THE PARTY TO BE CHARGED OR THE PARTY'S AGENT HAS FAILED**
28 **TO INFORM THE PERSON SEEKING TO MAINTAIN THE ACTION OR DEFENSE AS REQUIRED IN SECTION**
29 **31.**

30 (4) In the event of a conflict between this section and any other provision of state law pertaining

1 to the requirement of a signed writing, the provisions of this section control.

2

3 NEW SECTION. SECTION 3. DUTY TO INFORM. IN A TRANSACTION INVOLVING A LOAN OR
4 CREDIT AGREEMENT, THE PERSON PROVIDING THE LOAN OR CREDIT SHALL INFORM THE BORROWER
5 ORALLY AND IN WRITING PRIOR TO OBTAINING THE BORROWER'S SIGNATURE ON AN AGREEMENT
6 THAT ALL PREVIOUS ORAL REPRESENTATIONS ARE VOID.

7

8 NEW SECTION. Section 4. Codification instruction. {Section 2} is [SECTIONS 2 AND 3] ARE
9 intended to be codified as an integral part of Title 28, chapter 2, part 9, and the provisions of Title 28,
10 chapter 2, part 9, apply to {section 2} [SECTIONS 2 AND 3].

11

12 NEW SECTION. Section 5. Applicability. [This act] applies to agreements, subject to the
13 provisions of [this act] made on or after October 1, 1995.

14

-END-

1 HOUSE BILL NO. 234

2 INTRODUCED BY HIBBARD, BISHOP, ANDERSON, TUSS, CLARK, GRADY, GROSFIELD, DEVANEY,
 3 HALLIGAN, T. NELSON, SHEA, WYATT, PECK, MERCER, HARPER, ROSE, BARNETT, MILLS, CRIPPEN,
 4 B. BROWN, GRINDE, PAVLOVICH, MCKEE, WISEMAN, KNOX

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN LOAN AND CREDIT AGREEMENTS TO BE
 7 IN WRITING IN ORDER TO BE ENFORCEABLE; PROVIDING A DUTY TO INFORM; AMENDING SECTION
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 21 property, ~~or for the sale of an interest therein in real property.~~ Such An agreement, if made by an agent of
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26 (e) any case in which the funds are to be used for personal, family, or household purposes;

27 **(F) ANY CASE IN WHICH THE PARTY TO BE CHARGED OR THE PARTY'S AGENT HAS FAILED**
28 **TO INFORM THE PERSON SEEKING TO MAINTAIN THE ACTION OR DEFENSE AS REQUIRED IN SECTION**
29 **3.**

30 (4) In the event of a conflict between this section and any other provision of state law pertaining

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8 NEW SECTION. Section 4. Codification instruction. ~~{Section 2}~~ is [SECTIONS 2 AND 3] ARE
9 intended to be codified as an integral part of Title 28, chapter 2, part 9, and the provisions of Title 28,
10 chapter 2, part 9, apply to ~~{section 2}~~ [SECTIONS 2 AND 3].

11

12 NEW SECTION. Section 5. Applicability. [This act] applies to agreements, subject to the
13 provisions of [this act] made on or after October 1, 1995.

14

-END-